In the District Court of the United States for the Western District of Kentucky, Louisville Division

Action No. 706

THE STATE OF ALABAMA AND PUBLIC SERVICE COMMISSION, PLAINTIFFS, AND FRED M. VINSON, ECONOMIC STABILIZATION DIRECTOR, BY CHESTER BOWLES, PRICE ADMINISTRATOR, INTERVENOR-PLAINTIFFS

v.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, DEFENDANTS

Action No. 707

THE STATE OF TENNESSEE AND THE RAILROAD AND PUBLIC UTILITIES COMMISSION OF THE STATE OF TENNESSEE, PLAINTIFFS, AND FRED M. VINSON, ECONOMIC STABILIZATION DIRECTOR, BY CHESTER BOWLES, PRICE ADMINISTRATOR, INTERVENOR-PLAINTIFFS

v.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, DEFENDANTS

Action No. 708

COMMONWEALTH OF KENTUCKY AND RAILROAD COMMISSION OF KENTUCKY, PLAINTIFFS, AND FRED M. VINSON, ECONOMIC STABILIZATION DIRECTOR, BY CHESTER BOWLES, PRICE ADMINISTRATOR, INTERVENOR-PLAINTIFFS

v.

UNITED STATES OF AMERICA, DEFENDANTS

614650—44

JURISDICTIONAL STATEMENT BY INTERVENOR-PLAINTIFFS UNDER RULE 12 OF THE REVISED RULES OF THE SUPREME COURT OF THE UNITED STATES

The Intervenor-Plaintiff, the Economic Stabilization Director by the Price Administrator, respectfully presents the following statement disclosing the basis upon which it is contended that the Supreme Court of the United States has jurisdiction upon appeal to review the order and decree in the above-entitled causes sought to be reviewed:

A. STATUTORY PROVISIONS

The statutory provisions believed to sustain the jurisdiction are:

U. S. C., Title 28, Section 47 (Act of October 22, 1913, c. 32, 38 Stat. 220).

U. S. C., Title 28, Section 47a (Act of March 3, 1911, c. 231, 36 Stat. 1150, October 22, 1913, c. 32, 38 Stat. 220).

U. S. C., Title 23, Section 41 (28) (Act of June 18, 1910, c. 309, 36 Stat. 539; as amended March 3, 1911, c. 231, Sec. 207, 36 Stat. 1148; October 22, 1913, c. 32, 28 Stat. 219).

U. S. C., Title 28, Section 44 (Act of October 22, 1913, c. 32, 38 Stat. 220; as amended by Act of February 13, 1925, c. 229, Sec. 1, 43 Stat. 938).

U. S. C., Title 28, Section 345 (Act of March 3, 1891, c. 517, Sec. 5, 26 Stat. 827; as amended January 20, 1897, c. 68, 29 Stat. 492; April 12, 1900, c. 191; Sec. 35, 31 Stat. 85; April 30, 1900, c. 339, Sec. 86, 31 Stat. 158; March 3, 1909, c. 269, Sec. 1, 35 tat. 838;

March 3, 1911, c. 231, Secs. 238, 244, 36 Stat. 1157; January 28, 1915, c. 22, Sec. 2, 38 Stat. 804; February 13, 1925, c. 229, Sec. 1, 43 Stat. 938).

B. THE STATUTE OF A STATE, OR THE STATUTE OR TREATY OF THE UNITED STATES, THE VALIDITY OF WHICH IS INVOLVED

The validity of a statute of a state, or of a statute or treaty of the United States, is not involved. See statement of nature of case below.

C. DATE OF THE JUDGMENT OF DECREE SOUGHT TO BE REVIEWED AND THE DATE UPON WHICH THE APPLICATION FOR APPEAL WAS PRESENTED

The order and decree sought to be reviewed was entered on August 3, 1944. The petition for appeal was presented on September 29, 1944, together with an assignment of errors.

D. NATURE OF CASE AND OF RULINGS BELOW

This Appeal is from a final order and decree of the District Court of the United States for the Western District of Kentucky, entered August 3, 1944, denying Intervenor-Plaintiff's (Appellants') request for an injunction to set aside an order[1] of the Interstate Commerce Commission requiring the Alabama, Kentucky, and Tennessee railroads to maintain and apply passenger fares for intrastate transportation in said States which shall be on bases no lower than the passenger fares presently maintained and applied by said

[1] The Order in question was issued on May 24 1944, as a "Corrected Order," dated May 8, 1944, in Docket No. 29036, *North Carolina Intrastate Coach Fares*, 258 I. C. C. 133; Commissioners Splawn, Aitchison, and Mahaffie dissenting.

railroads for accommodations in interstate application to and from said States. The proceeding before the Commission was instituted by a petition of said railroads under section 13 (4) of the Interstate Commerce Act, following decisions by the plaintiff State commissions refusing to authorize increases in intrastate passenger coach fares from the general basis of 1.65 to 2.2 cents per mile and in Alabama and Tennessee, 30-day, round trips, sleeping and parlor car fares of from 2,475 cents to 2.75 cents per mile, because the railroads had failed to show any present need for the added revenue. The order of the Commission causes a direct and substantial increase in the cost of living and in the costs of many business enterprises in said States.

Appellants intervened as Protestants in the proceeding before both the State and Federal commissions. In the proceedings in the District Court, the Court granted Appellants' motions to intervene, accompanied by complaints (petitions) which allege, among other contentions, that the Commissions had failed or refused to give full effect to wartime conditions and the stabilization legislation, although it was under a duty to do so.

The District Court stated that full consideration had been given to the representations of the Price Administrator in these proceedings; and Appellants do not claim that the Commission denied them any procedural rights. Further, Appellants concur—and stated their concurrence to the District Court—with

the view expressed in the Commission's opinion in this and other cases that the stabilization legislation "made no changes in or additions to the Interstate Appellants pointe dout that this Court itself had charges of common carriers by railroad." But the Appellants pointed out that this Court itself had recognized that, in the administration of the Interstate Commerce Act, the Commission was under a duty to accommodate the application of the statute to other Congressional policies, and in particular was under a duty to give full effect to wartime conditions and the stabilization legislation.

It is Appellants' contention that the facts of record provide no substantial basis in evidence for the Commission's fifth finding, approved by the District Court, that traffic moving under the intrastate fares was not contributing its fair share of the revenue required to enable Respondents to render adequate and efficient transportation service.[2] In its decision, the Commission found that, as a result of wartime conditions, net revenues of said railroads had become extraordinarily high, and the passenger service was earning very substantial profits. Computation of the passenger-operating costs per passenger-carrying car-

[2] Such a finding is essential to a finding of undue, unjust, and unreasonable discrimination against interstate commerce under Section 13 (4) of the Interstate Commerce Act. *Florida* v. *United States*, 282 U. S. 194; 292 U. S. 1. The Commission's order also found prejudice to passengers traveling in interstate commerce, but the District Court did not rule with respect to the correctness of the Commission's finding with respect to this issue.

mile indicates them to be approximately the following for 1942.[3]

	In coaches	In parlor cars and sleeping cars
Southern Region	1.09¢	1.75¢
Kentucky railroads	1.25¢	1.90¢
Tennessee railroads	1.22¢	1.79¢

These costs are to be compared with intrastate coach fares of 1.65 cents per mile and the Alabama and Tennessee 30-day, round-trip, parlor- and sleeping-car fares of 2.475 cents per mile. Hence the Commission's fifth finding (District Court's finding of fact No. 4) must have been predicated on the fact, relied on to sustain the reasonableness of the interstate rates at the level of 2.2 cents per mile in coaches and 2.75 cents per mile in sleeping and parlor cars, that passenger service deficits were incurred prior to 1942. In other words, as the District Court suggested in approving the interstate rates, the Commission looked not to the present but to the past and future in making its determination, and "the proposed increased rates are not based on the need for additional revenue."

[3] These figures were computed from exhibits submitted in the proceedings before the Interstate Commerce Commission in the Alabama, Kentucky, and Tennessee cases, respectively, by multiplying the average revenues per passenger-carrying car-mile by the ratio of passenger-operating expenses to revenues. These approximations are probably too high rather than too low, because, as stated by the Commission in its report, travel in the Southern Region increased 128.5 percent in coaches and 30.2 percent in parlor and sleeping cars for the first ten months of 1943 as compared with the corresponding period of 1942, and also because the operating ratios of expenses to revenues dropped considerably in 1943. The approximation of costs per passenger-mile in coaches is probably too high, because the operating ratio is an average for the passenger service as a whole, while the coach loadings have increased considerably more than for parlor and sleeping cars.

Such reasoning, however, nullifies the Commission's duty to give full effect to wartime conditions and stabilization legislation or to meet the *present* economic crisis. To allow an industry to increase ceiling prices or rates to take advantage of wartime conditions in order to compensate for business losses during peacetime—past or future—is diametrically opposed to the objective of that legislation.

In sharp contrast to the Interstate Commerce Commission's decision is the decision of the three State commissions which considered the issues from a viewpoint consistent with the war stabilization program, and refused to authorize the increases of rates because of the phenominally high net revenues enjoyed by the railroads, and because of their failure to show present need for additional revenue from the increased fares. In so doing, the State commissions gave effect both to section 1 of the Stabilization Act of 1942 (50 U. S. C. App. § 961), which expressly provides for the participation by State and municipal regulatory agencies in the wartime stabilization program, and also to the President's Executive Order No. 9328, section 4, F. R. 4681, which expressly requests all State agencies to disapprove rate increases consistently with the Stabilization Act and other State and Federal legislation.

The case presents the following questions:

(1) Was the Interstate Commerce Commission justified in disregarding wartime considerations and acting instead upon peacetime considerations in overriding an order of the State commissions which, by de-

clining to authorize passenger fare increases not presently necessary, gives full effect to the wartime conditions consistently with the stabilization legislation?

(2) Did the order and decision of the Interstate Commerce Commission constitute an unlawful disregard, in the application of section 13 (4) of the Interstate Commerce Act, of the policy established by Congress in the stabilization legislation?

E. THE QUESTIONS ARE SUBSTANTIAL

The questions involved in this case are of importance to those traveling intrastate between points within the Southern region, not only in Alabama, Tennessee, and Kentucky, but also North Carolina which is taking an appeal from a like District Court decision. Moreover, if the decision by this Court were favorable to these States, possibly other southern state commissions would feel free to require that the carriers reinstate the intrastate fares in effect on September 15, 1942, on the basis of 1.65 cents per mile.

Apart from the effect of the decision on the intrastate fare structures of a number of states, the legal issue is important. While Appellants appreciate that, as this Court has said, the weight to be given the Price Administrator's contentions is for the Commission to determine, they do not suppose that this statement by the Court had the effect of relieving the Commission from its duty to make basic findings supported by substantial evidence, *Florida* v. *United States,* 282 U. S. 194. Yet, if the facts of record

herein do not compel the conclusion that were full effect given to wartime conditions and the stabilization legislation, no increases of fares would be required by the Interstate Commerce Act, then Appellants cannot conceive of any case in which a finding could be made that a proposed increase would contravene the national stabilization policy. Consequently, approval of the Commission's finding in this case would have the effect of denying the sanction of judicial review to the Commission's duty to give full effect to wartime conditions and the stabilization legislation.

F. CASES SUSTAINING JURISDICTION

Interstate Commerce Commission v. *Jersey City*, 321 U. S. 755.

McLean Trucking Co. v. *United States*, 321 U. S. 67.

Southern S. S. Co. v. *National Labor Relations Board*, 316 U. S. 31.

Federal Power Commission v. *National Gas Pipeline Co.*, 315 U. S. 575, 590.

Florida v. *United States*, 282 U. S. 194.

G. DECREE AND OPINION OF THE DISTRICT COURT

Appended to this statement is a copy of the opinion of the District Court and a copy of the decree of said Court sought to be reviewed.

We, therefore, respectfully submit that the Supreme Court of the United States has jurisdiction of the appeal.